



March 12, 2014

Director Thomas Pristow
Division of Health & Human Services
301 Centennial Mall South, 3rd Floor
Lincoln, NE 68509

Dear Director Pristow,

ACLU Nebraska has recently received a number of complaints regarding religion and the foster care system. For example, we have heard from an atheist whose young children were proselytized to and instructed in Catholic beliefs by their foster family against the father's express wishes. We have also received complaints from Jewish families whose children were brought to church rather than synagogue by the foster parents despite the parent's objections. Finally, even among the large group of Christian parents, we've heard from those whose children were baptized or proselytized to by foster parents who belonged to a different Christian sect.

Religion, or the lack thereof, can play an important role in the lives of children, and accommodating a child's faith is in the interest of foster children throughout the state. While the best interest of the child is undoubtedly the most important thing to consider when placing and monitoring children in foster care, parents also have constitutional rights. Both the Nebraska Supreme Court and the Supreme Court of the United States have recognized the importance of the parent/child bond and the implications this has for the education and religious training of children.

The relationship between a parent and a child is always constitutionally protected. *Friehe v. Schaad*, 249 Neb. 825, 833 (1996). Parents have a fundamental liberty interest in maintaining custody of their children. *Stanley v. Illinois*, 405 U.S. 645 (1972). The right to choose the religious upbringing of a child is a fundamental right subject to strict scrutiny. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Parents have the right to educate their children as they see fit. *Meyer v. Nebraska*, 262 U.S. 390 (1923).

Nebraska law reflects these important principles by requiring the state to respect the religious faith of children in its custody. The law reads:

The court in committing juveniles under the Nebraska Juvenile Code shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of the juvenile or with some association which is controlled by persons of like religious faith of the parents of the juvenile. Neb. Rev. Stat. § 43-298.

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The religious faith of children coming under the jurisdiction of public welfare officials shall be preserved and protected. Neb. Rev. Stat. § 43-509.

These state laws are implemented in the Department of Health and Human Services regulations, which read in part:

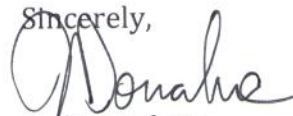
390 NAC 11-002.01S RELIGION

The Department will provide reasonable opportunities for a child in out-of-home care to maintain his/her religious beliefs and practices. The following will be used as guidelines in providing reasonable opportunities:

- The child's religion is assumed to be that of his/her parent unless the family indicates otherwise.
- The child's religious beliefs will be respected by the out-of-home care providers. This includes providing reasonable opportunities for the child to practice his/her religious beliefs and honor religious dietary practices, if applicable.
- The foster care provider will not require the child to practice the foster care provider's faith (that is, be baptized, receive communion, be confirmed, witness or go to confession).
- The foster care provider may require the child to attend a place of worship with the family. If the child's family, the child or the worker sees this as interfering with the child's practice of his/her religion, other arrangements must be made.
- If the child wishes to change his/her religious faith or practice to the foster care provider's religion, parental permission is required unless the parent(s) is unavailable.

From the highest court in the land to the regulations of this department, there is unanimous agreement that the state must respect the religious rights of parents and children.

Sadly, our complainants indicate that some DHHS employees and foster parents are not taking this issue seriously and are ignoring the wishes of parents and children within the foster care system. We hope you will take a moment to emphasize to all foster parents and caseworkers the importance of deferring to the religious wishes of parents and children.

Sincerely,

Joel Donahue
Staff Attorney

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